INDIAN RESIDENTIAL SCHOOLS ADJUDICATION SECRETARIAT

INDEPENDENT ASSESSMENT PROCESS

2011 ANNUAL REPORT

Annual Report of the Chief Adjudicator to the Independent Assessment Process Oversight Committee

Indian Residential Schools
Adjudication Secretariat
Secrétariat d'adjudication
des pensionnats indiens

About the Indian Residential Schools Adjudication Secretariat

The Indian Residential Schools Adjudication Secretariat is an independent, quasi-judicial tribunal providing impartial application processing and decision-making for claims of abuse at federally-administered Indian Residential Schools.

The Adjudication Secretariat manages the Independent Assessment Process (IAP), a non-adversarial, out of court process for claims of sexual abuse, serious physical abuse, and other wrongful acts causing serious psychological injury to the claimant. As one of the compensation programs established under the Indian Residential Schools Settlement Agreement, the IAP is the only option for former residential school students to resolve these claims, unless they opted out of the Settlement Agreement. IAP applications will be accepted until September 19, 2012.

The Adjudication Secretariat has become one of Canada's largest quasi-judicial tribunals, holding over 3,500 face-to-face hearings every year with the support of over 100 adjudicators and 200 staff. It reports to the Chief Adjudicator, Daniel Ish, Q.C., who was appointed by the IAP Oversight Committee and confirmed by the courts.

Daniel Ish, Q.C.

Chief Adjudicator

Kaye E. Dunlop, Q.C.
Michel Landry
Rodger W. Linka
Delia Opekokew
Daniel Shapiro, Q.C.

Deputy Chief Adjudicators

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Executive Director

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MESSAGE FROM THE
CHIEF ADJUDICATOR

The year 2011 was a study in contrasts for the Independent Assessment Process. On the one hand, the Independent Assessment Process turned in a record-breaking performance – the best ever achieved to date. At the same time, the need to focus on claimants and ensure their protection has never been greater.

The numbers speak for themselves. 3,746 hearings were held in 2011, a number that brings the goal of 4,000 first claimant hearings per year within reach. Adjudicators issued 3,250 decisions during the year, which combined with 591 negotiated settlements and 549 withdrawals and non-admits, meant that almost 4,400 claims were resolved during the year.

The IAP is not a numbers exercise, however. Behind these achievements are over 100 adjudicators – including 19 new adjudicators appointed in 2011 – and 200 staff engaged in the work of the Adjudication Secretariat. It is these people, with the support and cooperation of the parties, whose hard work maintained and improved the quality of the IAP experience for claimants. Many of their initiatives are detailed in this report. We must now focus on bringing the IAP to a successful conclusion. By the end of 2011, 24,708 applications had been received and 22,636 admitted. Of these, 13,590 – three out of five – had been resolved. With the applications we expect to receive in 2012, this leaves somewhere in the order of 15,000 claims to be resolved over the remaining years of the IAP. As this report details, the Adjudication Secretariat has worked diligently throughout the year to propose ways of concluding the IAP in a way that is expeditious but respects the courage and experience of every survivor who comes forward in the process.

> We must now focus on bringing the IAP to a successful conclusion.

As I write this in the spring of 2012, it appears likely that the IAP will continue to hold hearings into 2015, with post-hearing activities and decisions continuing for some time beyond 2015. While this is a far longer time period, and many more hearings, than I had ever anticipated, I am confident that our progress to date demonstrates that the IAP can be brought to a successful conclusion.

These accomplishments are somewhat overshadowed by serious concerns about the integrity of the process. This year saw one lawyer disbarred, another suspended pending disbarment (he was disbarred in 2012), and a law firm placed under investigation by the Supervising Courts. All of these cases involved the conduct of lawyers towards vulnerable, often elderly, residential school survivors, and the professional conduct infractions were very serious. As well, adjudicators have noted cases where lawyers arrive at the hearing unprepared, have met their client for the first time at the hearing, or have denied their client access to health support and other services.

When I accepted the appointment as Chief Adjudicator in 2007, I never anticipated that my duties would include regulating the lawyers who appear for claimants. I have, however, come to the conclusion that such a role is necessary in order to preserve the integrity of the IAP – a process that is meant to be claimant-centered and ought never to do further harm to those who suffered abuse at residential schools. This report outlines some of the measures taken in 2011, and planned for 2012, to improve the quality of legal representation in the IAP. As well, I will be seeking the guidance of the supervising courts on the Chief Adjudicator's role in this area, as well as the cooperation I can expect from the other parties.

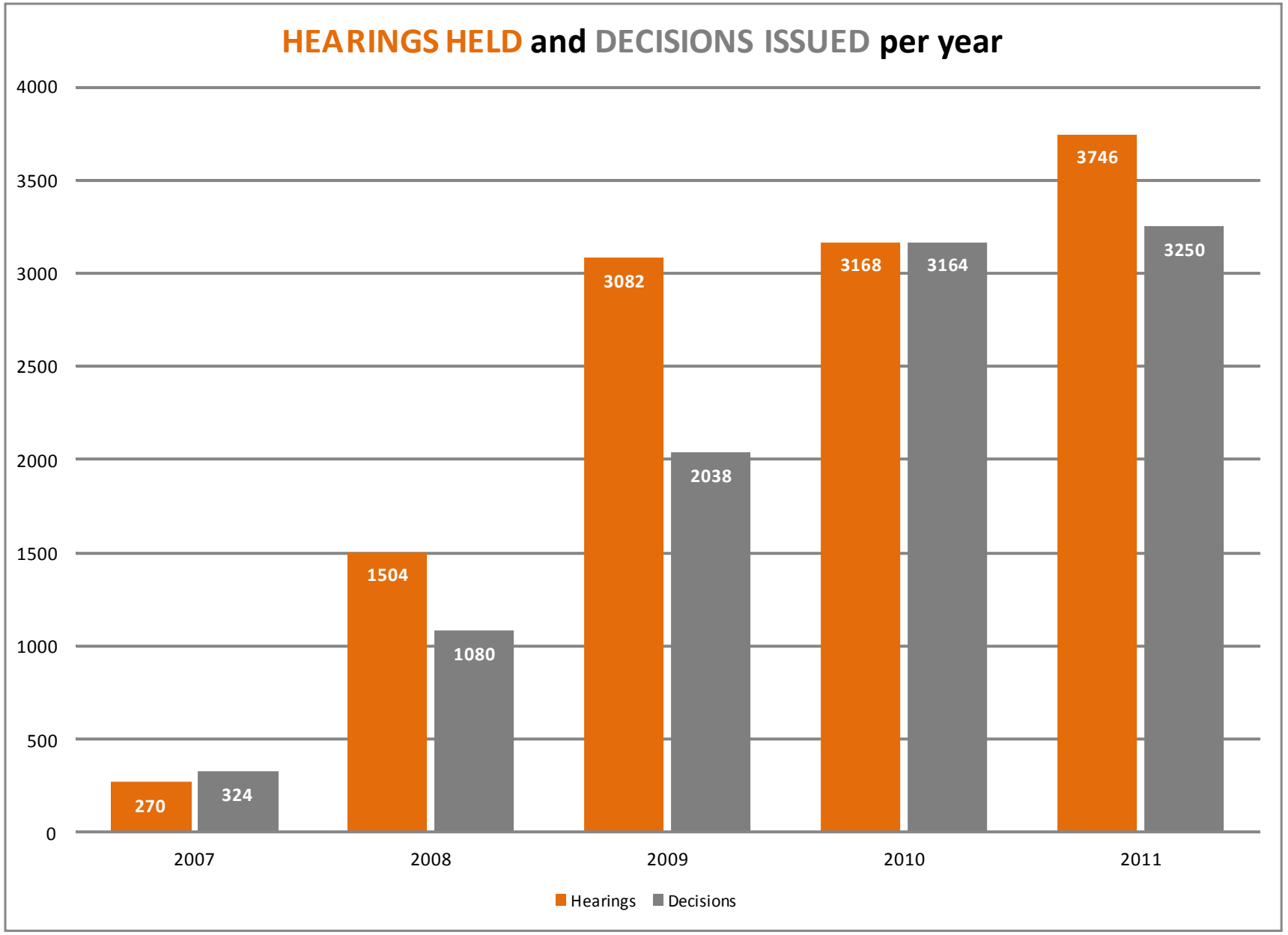
Our work in 2012 will be dominated by two key activities. The first, planning the completion of the IAP, takes a significant step forward with the application deadline on September 19, 2012, five years after implementation of the IAP. At that time, we will have a much clearer picture of the task remaining, although it will be greater than initially anticipated when the IRS Settlement Agreement was implemented.

The second focus will be to ensure that the legacy of the IAP is a proud one, which justifies the important historical significance for Canada of the Indian residential Schools Settlement Agreement. This will require the continued focus of all parties on survivors. First and foremost, the IAP must serve their interests, do no further harm and add no burden to those who have carried so much for so long. The adjudicators and staff of the Adjudication Secretariat share my commitment to a fair, compassionate, and claimant-centred process for all survivors who come forward in the IAP.

Daniel Ish, Q.C.
Chief Adjudicator

KEY PERFORMANCE NUMBERS

	2007	2008	2009	2010	2011	Since Implementation
Applications Received	3,832	5,445	4,746	5,156	5,529	24,708
Claims Resolved	404	1,522	3,104	4,170	4,390	13,590 [55%]
Adjudicator Decisions	324	1,080	2,038	3,164	3,250	9,856
Negotiated Settlements	0	47	385	436	591	1,459
Claims Ineligible / Withdrawn	80	395	681	570	549	2,275


HEARINGS HELD and DECISIONS ISSUED per year
4000
3500
3000
2500
2000
1500
1000
500
0
270
324
1504
1080
3082
2038
3168
3164
3746
3250
2007
2008
2009
2010
2011
Hearings
Decisions

DEALING WITH VOLUME

All parties in the Independent Assessment Process have struggled with a much higher than expected volume of applications since the inception of the IAP. The process was built for an estimated 12,500 applications, but by the end of 2011 almost 25,000 applications had been received. The Adjudication Secretariat now estimates around 30,000 total applications will be received by the September 19, 2012 application deadline.

This high volume of claims has challenged all parties to find ways to deal with claims more effectively, while meeting Settlement Agreement requirements and ensuring a high level of service to claimants.

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Interactive File Management System

One of the most vexing problems in the IAP is the slow rate of mandatory document production. Most claimants need to submit medical, education, and income records to prove higher levels of harm and opportunity loss in the IAP, and cannot have a hearing scheduled until the documents are produced. Many claimants' counsel experience difficulty obtaining these documents, but the causes of delay have proven difficult to pinpoint. As well, some claimants' counsel lack appropriate information systems to track document production across a large number of claims.

In order to address both concerns, the Adjudication Secretariat developed an Interactive File Management System (IFMS) in 2011. This secure web-based tool allows authorized claimants' counsel and their office staff to view the status of their clients' claims in real time, and provide updated information directly into the system. This eliminates time-consuming rounds of correspondence and gives the Secretariat valuable information on the causes of delay that was previously unavailable. For example, if several lawyers are encountering delay at a particular government institution, we may be able to intervene and assist.

Preliminary testing of the IFMS system in 2011 involved five law firms, and implementation began early in 2012. The Adjudication Secretariat continues to meet with other high-volume legal firms and hopes to have the majority of claimants' counsel using the system by the end of 2012. Counsel and their staff are also helping identify additional features that could be added to future versions.

Expedited Hearings

While most claimants must submit mandatory documents before a hearing can be scheduled, the Settlement Agreement allows 'expedited' hearings to be scheduled for evidence-taking purposes when the claimant submits medical evidence to verify that a delay in holding their hearing involves a risk that they may die or lose the capacity to provide evidence. In 2011, the Adjudication Secretariat held 470 expedited hearings, a modest increase over 430 held in 2010.

In previous years, the Chief Adjudicator expressed concern that the expedited hearing process may be manipulated by some parties. Some legal counsel request expedited hearings for all of their clients, using form letters that do not speak to the criteria in the Settlement Agreement. This places the Adjudication Secretariat in a difficult position: we do not wish to deny expedited hearings to those who truly require them, while at the same time we do not condone 'queue-jumping' ahead of claimants who have often waited longer to submit all the proper documents.

To address this problem in part, the Adjudication Secretariat in 2011 implemented a new form for expedited hearing requests, which places responsibility for assessing the claimant's medical needs in the hands of their attending physician, rather than their lawyer or Secretariat staff. The Secretariat will continue to monitor these requests and make further recommendations as appropriate.

Pilot project for Elderly Claimants

A significant concern to all the parties is the number of elderly claimants waiting for a hearing – sometimes for two years or more. While the Settlement Agreement gives priority for hearing dates to claimants over age 70 and age 60, a claim must still be 'hearing ready' – meaning that all documents are submitted by Canada and the claimant – before it can be scheduled. The 'expedited' process described above is available only where medical evidence is available demonstrating that the claim must be heard immediately.

As part of its work to help conclude the IAP more quickly, which is described in more detail below, the Adjudication Secretariat proposed a number of measures that would help the IAP's oldest claimants. The parties agreed to develop a pilot project for elderly claimants where a number of innovations, including new scheduling approaches and more intensive case management by adjudicators, could be explored.

> A significant concern to all the parties is the number of elderly claimants waiting for a hearing – sometimes for two years or more.

The Adjudication Secretariat has committed significant staff and adjudicator resources to the project. It will require the full and sustained commitment of all parties to ensure success.

Postponement Policy

For several years, the high rate of postponements and cancellations of hearings has been a significant impediment to resolving more claims per year. In 2011, 19.94% of hearings did not proceed as scheduled, almost one in five. These postponements come at a significant financial cost to the Adjudication Secretariat ($1.6 million in the 2010-11 fiscal year), and also to the other parties who may have travelled to attend. Moreover, postponed hearings do a significant disservice to other claimants waiting for a hearing.

In 2011, the Adjudication Secretariat conducted a comprehensive analysis of postponements in the IAP and researched the practices of other tribunals.

Following consultation with stakeholders, the Chief Adjudicator issued a Guidance Paper on postponements that took effect on December 5, 2011. The paper set out a new approach for postponements with several key elements:

- All postponements, cancellations, or significant changes requested within 10 weeks of the hearing date must be approved by the adjudicator.
- The adjudicator may require the parties to take all possible measures to prevent the postponement, and may set conditions for any postponed hearing.
- The adjudicator may impose consequences if a participant fails to attend a hearing without proper cause, or if their conduct causes the Secretariat to incur avoidable financial costs.

Early experience with the new procedure suggests that it is working as anticipated. Adjudicators and the parties are finding creative ways to preserve hearing dates, and when a request to postpone is made, adjudicators are giving it careful consideration. The new procedure has underscored the importance of good preparation by the parties and their representatives. For example, claimants who have met with their lawyers several times in the weeks leading to a hearing are much more likely to attend. Where a claimant has not been properly prepared, the adjudicator is able to fashion a remedy that does not unduly penalize the claimant.

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Short Form Decisions

In 2010, adjudicators began offering short form decisions to claimants as an alternative to a regular decision that sets out the evidence and the adjudicator's findings. Short form decisions are appropriate in cases where the parties agree, at the hearing, on the points and dollar amounts to be awarded. They provide claimants with greater closure the day of the hearing, and allow compensation to be paid more quickly. Claimants always have the right to request a full decision, for memorialisation or other reasons.

In 2011, 44% of decisions were issued in short form, an increase of 4% from 2010. The Chief Adjudicator will continue to encourage the use of short form decisions in appropriate cases, to provide faster resolution for claimants and make the best use of adjudicator time.

Negotiated settlements

In addition to the hearing process, the parties have the option of reaching a negotiated settlement without a hearing.

Since the implementation of the Settlement Agreement, the number of claims resolved through negotiation has increased each year, with a total of 1459 resolved since 2007 – representing almost 11% of all claims resolved since implementation. The number of negotiated settlements increased by 34% in 2011 to 591, over 436 the previous year.

In 2011, Canada undertook a review of its negotiated settlement process, and identified and implemented

some areas of improvement, resulting in more efficient and expeditious resolution of claims.

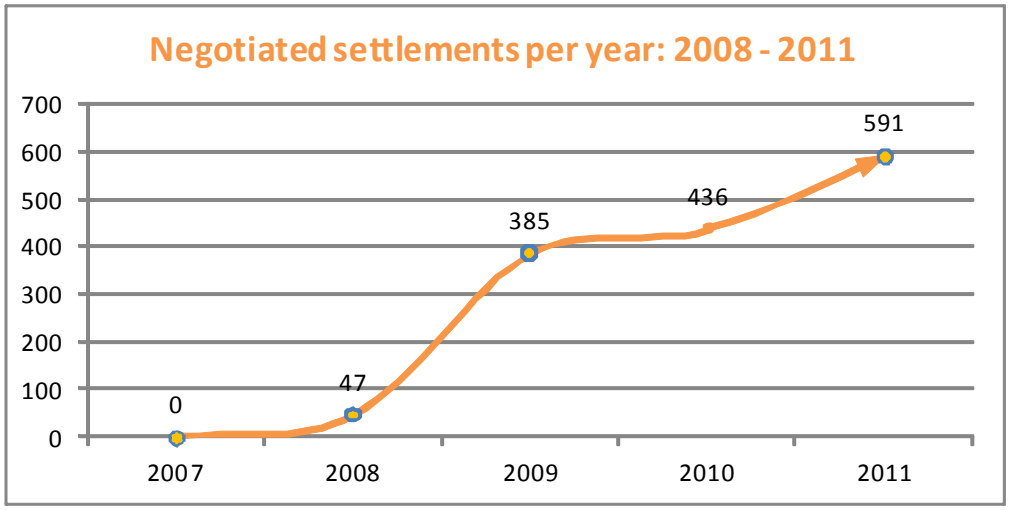
A negotiated settlement can take place based on existing evidence from litigation proceedings or the previous Alternative Dispute Resolution (ADR) process, or through an interview conducted by a representative of Canada. Because of the need for oral evidence in most cases, the parties usually agree at an early stage to negotiate the claim; this avoids the need for last-minute hearing cancellations in many cases. Of note, careful selection of claims by Canada and the other parties has resulted in less than 1% of claims accepted into the process being unable to resolve through negotiation.

For our part, the Adjudication Secretariat is also taking measures to improve the prospects for negotiated settlements. Evidentiary packages are now distributed at the time the hearing is scheduled, rather than five weeks before the hearing, in order to provide the parties with more time to determine if a claim can be settled. As well, adjudicators received more training on the process to assist them in fairly determining legal fees when a claim settles through negotiation.

Staffing and Secretariat capacity

The Adjudication Secretariat has been challenged by federal government regulations on staffing. These rules, designed for stable, long-term operation of government departments, are inappropriate for a temporary agency that must hire staff quickly to administer a court-supervised process that is demand-driven. Thus, while the government has always provided the necessary funding to staff the IAP, its rules have made it difficult and time-consuming to actually put people in place.

New complications arose in 2011 as the government prepared for significant staff reductions in other areas. While the Adjudication Secretariat's budget and staffing levels were protected, our ability to hire has been constrained in other ways.



Because of the time-limited nature of the IAP, since 2008 the government has required the Adjudication Secretariat to hire primarily "term" employees, rather than indeterminate (permanent) staff. Accordingly, more than one-third of Secretariat staff are employed on a term basis, which provides less job security. In 2011, the job protection for these employees was further reduced. The normal government policy is to automatically convert employees from term to indeterminate status after three years' service in the same department. In early November 2011, the government suspended the conversion of term employees in the Secretariat and several other areas. Over 60 staff in the Adjudication Secretariat are impacted, as well as over 100 staff at Aboriginal Affairs and Northern Development Canada working on the Settlement Agreement.

While no Secretariat staff have been laid off, we are concerned that term employees, deprived of any real job security, will feel compelled to accept indeterminate offers elsewhere – thus negating the substantial time and effort put into selecting and training them. Combined with the existing challenges posed by government staffing rules and procedures, this could further impede the full staffing required for maximum efficiency and productivity. Another potential risk is that current term employees might be displaced by surplus indeterminate employees from other government organizations. Such a displacement would represent a significant loss of corporate memory and training investment, as well as an additional productivity loss as the surplus employee adapts and trains for work at the Adjudication Secretariat.

As changes unfold in 2012, we will continue to monitor and report on the effect of government staffing rules on our ability to meet targets and Settlement Agreement commitments.

QUALITY AND FAIRNESS IN DECISION-MAKING

New adjudicators

Adjudicators play a fundamentally important role in the IAP. They hold principal responsibility for ensuring the claimant has a positive hearing experience, and that the process is fair to all parties. They set the tone, ask all the questions, make findings of fact, and determine the compensation the claimant will receive.

In order to ensure an adequate complement of adjudicators to hold hearings in 2012 and beyond, a fourth round of adjudicator selection was conducted in 2011. In June, 19 new adjudicators were appointed, trained over five days in August, and began their first hearings in the fall.

Renewal of adjudicators

In 2011, the Deputy Chief Adjudicators completed a second round of evaluations on adjudicators appointed between 2007 and 2010. The evaluations considered factors such as adjudicators' ability to apply the rules of the IAP, ability to write, timeliness of decisions, and care and skill in conducting quality hearings. As a result of these evaluations, the Chief Adjudicator recommended 81 adjudicators for renewal to the end of the IAP, as well as the five Deputy Chief Adjudicators. The Oversight Committee accepted the recommendations.

Ensuring consistency in decisions

While the IAP does not operate on a system of binding precedent, the Chief Adjudicator takes measures to ensure consistency in decision-making between over 100 adjudicators across the country.

A database of significant decisions is available to legal counsel and adjudicators in the IAP. Over 3317 decisions are now available, with a particular emphasis on review decisions and difficult areas such as student-on-student cases. The database offers sophisticated search capabilities to help facilitate research. All personal information about claimants and alleged perpetrators is removed from decisions before they are made available on the database.

During the year, the Chief Adjudicator and his deputies have conducted formal and informal training sessions and meetings of adjudicators to help them share experiences and best practices. Given the far-flung nature of many IAP hearings, these meetings are an essential means of promoting collegiality and consistency across the system.

Reviews

The past year has seen a significant increase in the number and complexity of review requests. The IAP allows either party to request a review if the adjudicator has not properly applied the IAP Model to the facts as found by the adjudicator; as well, the claimant can request a review if there is an overriding and palpable error. Both types of review demand serious consideration and attention by adjudicators.

In 2011, 157 reviews were requested and 154 were completed. Significant review decisions were issued on a number of topics, including the assessment of credibility and reliability, determining whether abuse arose from the operation of a residential school, assaults committed by fellow students, and the meaning of acts proven categories in the IAP.

Directives

In order to promote consistency of decision-making in the IAP, the Chief Adjudicator and his deputies work with the Oversight Committee and its Technical Subcommittee to develop directives and guidance papers on certain aspects of the process. In 2011, two new directives were issued:

- Chief Adjudicator's Directive 9 codifies procedures for resolving jurisdictional issues that might prevent a claim from succeeding. The objective is to help claimants avoid investing substantial emotional effort, time and financial resources only to find out at the end of the process that their claims do not fall within the scope of the IAP. The directive allows a party to request a pre-hearing teleconference to address these issues at an early stage.

- Guidance Paper 7 implements the Chief Adjudicator's policy to reduce unnecessary hearing postponements by requiring an adjudicator's approval for adjournment requests less than 10 weeks from the hearing. This approach is described in more detail elsewhere in this report.

All directives and related documents can be found on the IAP's web site at www.iap-pei.ca.

ENSURING A POSITIVE EXPERIENCE FOR ALL CLAIMANTS

Many people contribute to a successful IAP claim: adjudicators, health support workers, elders, interpreters, Canada's representatives, legal counsel, Church participants, and Secretariat staff all play important roles.

The IAP is a complex legal process, and all parties to the Settlement Agreement recommend that claimants have legal representation. The vast majority of IAP lawyers provide good service to their clients, often in difficult circumstances. It is a reflection of this service that over 95% of claimants have chosen to hire a lawyer.

Supporting legal counsel

The Adjudication Secretariat recognizes claimants' counsel as important partners in processing and resolving IAP claims. In 2011, it took several measures to support counsel:

- The Secretariat published a comprehensive Desk Guide for legal counsel, providing specific and detailed information on all aspects of the IAP. While the Guide will primarily benefit lawyers who are new to the process, it provides a useful reference for any lawyer requiring information on matters of process.
- The Interactive File Management System, described in more detail above, provides a web-based, real-time tool to assist both lawyers and the Adjudication Secretariat with the management of claims.
- The Chief Adjudicator and Adjudication Secretariat staff have provided guidance as necessary on practice issues.

Legal fee reviews

The court orders implementing the Settlement Agreement assigned to adjudicators the unconventional additional responsibility to review each claimants' legal fees. In all cases, an adjudicator must ensure that fees do not exceed 30% of the claimant's award. As well, adjudicators can review legal fees to determine if they are fair and reasonable, at the claimant's request or on the adjudicator's own initiative.

4,450 legal fee reviews were conducted in 2011, including 648 "fairness and reasonableness" reviews.

Certain legal counsel have mounted a court challenge to various aspects of the fee review process. In March 2011, Ontario Chief Justice Winkler, one of the supervising judges, determined that the process for legal fee reviews as set out in the court orders provides an appeal to the Chief Adjudicator, but that there is no further judicial review or appeal to the courts. This direction has been appealed by claimants' counsel and will be heard by the Ontario Court of Appeal in February 2012.

Under the Settlement Agreement, Canada pays an additional 15% of the claimant's award as a contribution towards legal fees. This has the effect of lowering the fees paid by the claimant. In fact, the average claimant pays only 5% out of their award. Many claimants pay no fees from their awards, either because they negotiated fees equal to Canada's 15% contribution, or because the fees were lowered on review.

However, in some cases adjudicators have determined that a fee award of just 15% -- Canada's contribution – is not fair and reasonable. In June 2011, the Chief Adjudicator notified claimants' counsel that, in rare cases, an adjudicator may award fees below Canada's contribution. He wrote that,

> *"in some situations, a 15% fee is not fair and reasonable because it over-compensates for the services provided. While it is hoped that these situations are not common, they certainly include cases where counsel has had no communication whatever prior to the day of the hearing, where counsel appear at a hearing with the wrong claimant (in one case on more than one occasion relating to the same file), delays in the prosecution of files attributable totally to counsel inaction and false or altered certifications on applications. In short, Canada's 15% contribution toward legal fees is not a guaranteed minimum irrespective of the adequacy and quality of legal services provided to claimants."*

By the end of 2011, 12 legal fee reviews had reduced fees below 15%.

Ensuring quality representation

For several years, the Chief Adjudicator has expressed his concern about the need to maintain a high standard of ethics and legal representation in the IAP. While there are many excellent lawyers who provide good service to claimants, their work risks being overshadowed by several troubling developments in 2011:

- A British Columbia lawyer was disbarred for several financial irregularities in relation to IAP claimants, and for making unprofessional and rude statements about an adjudicator.

- A Manitoba lawyer was suspended for taking legal fees from his clients above those approved by adjudicators. Over 60 claimants were defrauded of over $900,000. A formal disciplinary hearing was set for February 2012. If the lawyer is found guilty, the Law Society of Manitoba will compensate claimants for any losses.

- One of the supervising judges ordered an investigation of an Alberta law firm by the Court Monitor after allegations of improper loans and misrepresentations on IAP application forms were brought to the Monitor's attention. The investigation was ongoing at the end of 2011.

While these cases draw attention because of their especially egregious nature, adjudicators and Adjudication Secretariat staff also hear from claimants concerned with the quality of their legal representation. Instances that have been noted include lawyers who:

- do not return calls from claimants or keep them apprised of the status of their case;

- do not meet their clients until the morning of the hearing;

- fail to explain the process to their client and seek instruction on important issues;

- prevent the claimant from accessing health support services;

- negatively impact hearings by falling asleep, consuming intoxicants, or behaving in an inappropriate manner;

- fail to clearly explain the fees and taxes that will be deducted from the claimant's award; and

- engage in assignments of settlement funds or other improper financial dealings.

Up to this point, the Chief Adjudicator has taken a limited role in policing legal practice in the IAP. Claimants with concerns about their lawyers have generally been referred to provincial and territorial law societies, although adjudicators have, on occasion, reported lawyers directly. The law society disciplinary process moves slowly, and is unsuitable for correcting problems as they emerge.

In November 2011, following a court hearing into the practices of an Alberta law firm, the Chief Adjudicator implemented an additional measure designed to protect claimants. Adjudicators were asked, in situations where concerns arose, to file a special written report with the Chief Adjudicator. Areas of concern may include lack of preparation, the manner in which the application form was completed, and financial issues.

Several claimants' counsel have challenged the Chief Adjudicator's authority to inquire into issues of legal practice. This issue will be decided by the supervising courts in 2012.

There is no reason why all IAP claimants cannot enjoy the high level of service provided by the best lawyers in the IAP. The Chief Adjudicator will be taking several measures in 2012 to encourage high quality legal representation:

- The Adjudication Secretariat will publish helpful and accessible information for claimants outlining what they have a right to expect from their lawyer, and providing tips on how to work effectively with a lawyer.

- The Chief Adjudicator will centralize handling of complaints about lawyers, to help identify and resolve problems more expeditiously.

- The Chief Adjudicator will continue to work actively with law societies to promote good practice and deal swiftly with issues that arise.

- The Adjudication Secretariat will work with the Court Monitor to support its continuing investigation, and to assist the courts in determining appropriate measures to protect claimants.

THE APPLICATION DEADLINE

Except for claimants who opted out of the Indian Residential Schools Settlement Agreement, the IAP is the only way to resolve a claim of abuse at a listed residential school. The Settlement Agreement gives claimants five years in which to file an IAP claim: from September 19, 2007 to September 19, 2012. After that date, only very limited recourse to the courts will be available to former students.

As the IAP entered the last year for applications, the Adjudication Secretariat redoubled its efforts to inform survivors about the IAP.

Notice program

As the largest class action settlement in Canadian history, the Settlement Agreement has also required substantial, court-supervised notice programs to ensure that class members are aware of their rights. These programs are designed by a specialized class action notification firm that can provide the court with affidavit evidence about the scope and reach of the program.

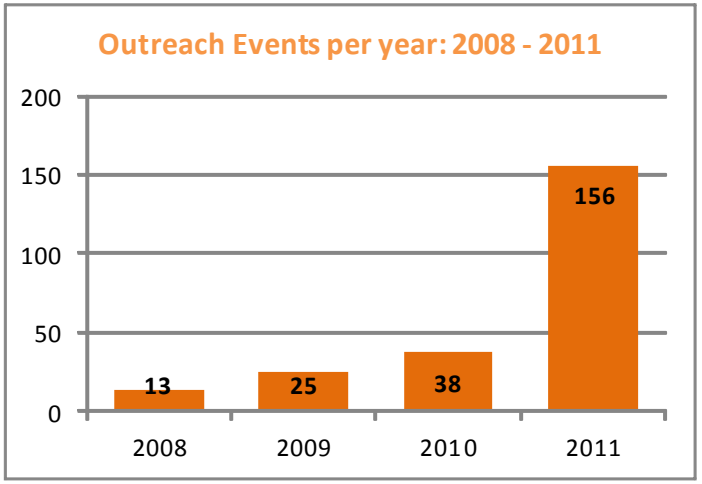
Several comprehensive national campaigns have taken place since 2006 in numerous print and broadcast media, as well as internet and telephone contact. During 2011, a notice program to advise claimants of the CEP application deadline generated a small surge of IAP applications.

A final notice program will be launched in early 2012 to remind class members of the IAP deadline. In addition to conventional media, notices will be focussed on the urban Aboriginal population through transit advertisements and outreach to homeless shelters. As well, a personal letter will be sent to each CEP applicant who had not applied to the IAP. This notice plan is expected to reach 82% of Aboriginal adults over the age of 25 and, combined with the previous notices in 2006, 2007, and 2011 over 98% of the target population will be reached an average of 14 times.

Outreach

The Adjudication Secretariat runs an extensive outreach program to augment the official notice programs. In 2011, particular focus was placed on difficult-to-reach populations, including survivors living in the North and in care facilities and penitentiaries. As well, sessions are targeted toward communities with a significant gap between CEP and IAP application rates, which possibly indicates survivors who are unaware of the IAP. This has resulted in a focus on Saskatchewan, Quebec, and the North.

A total of 156 outreach sessions were held in 2011, a very substantial increase over previous years.



French and Aboriginal language interpreters are available at many outreach sessions. As well, presentation materials are available in English, French, Inuktitut, Nunavik, Ojibway, Dene dialects (South Slavey, North Slavey, Chipewyan, Tlicho (Dogrib)), and Innuinaqtun. Elders and health support workers are available at outreach sessions to ensure the well-being of attendees.

A special focus in 2011 was survivors who are homeless, incarcerated, or otherwise in care – to ensure that these populations are aware of their right to make a claim. Secretariat staff hold sessions in shelters and care facilities, and also hold sessions for staff of these facilities and organizations to engage them in reaching this difficult-to-contact population.

Adjudication Secretariat staff also participated in the Truth and Reconciliation Commission's National Events held in Inuvik, NWT and Halifax, NS. Individual claimants and potential applicants were able to meet privately with staff, ask questions, and receive update on the status of their claims. The Inuvik event also helped build connections for the delivery of IAP information sessions to isolated communities across the North.

The Secretariat expects to provide approximately 130 sessions in the nine months remaining before the application deadline

in September 2012. After the deadline, continued outreach efforts will help meet the information needs of IAP claimants. In addition to sessions conducted by staff, we will continue working with community organizations across Canada to ensure that IAP information is clear, accurate and timely.

Application assistance program

While all parties to the Settlement Agreement recommend that claimants retain qualified legal representation in the IAP, some claimants do not have access to lawyers in their community or do not wish to hire one. For these claimants, the need to complete the IAP application form can present a barrier to entering the IAP.

In September 2011, the Adjudication Secretariat contracted with the Assembly of First Nations to deliver a national Application Assistance Program to help improve access to the IAP. Application Assistance Workers meet in person with potential self-represented claimants to explain what information is required to complete the IAP application and how it will be used. The worker's role is limited to showing claimants how to complete and submit the application. They do not provide legal advice.

The Secretariat developed a special training program to ensure that workers deliver a consistent, high-quality service to survivors that provides accurate information so that potential claimants can make informed decisions.

The Application Assistance Program is provided at no cost to the claimant. The Adjudication Secretariat recommends that claimants use only a lawyer or a Secretariat-trained Application Assistance Worker to apply to the IAP.

Additions to the list of eligible residential schools

The Settlement Agreement covers 130 institutions listed in Schedules E and F to the agreement. However, there is also a procedure to add other institutions to the list if they meet certain criteria set out in the Agreement. For example, the school must have had a residence where children were placed away from the family home, and Canada must have been jointly or solely responsible for the operation of that residence.

Since implementation, Canada has added six institutions to Schedule F. On August 16, 2011, the supervising court issued a decision adding two additional institutions, Stirland Lake High School (Wahbon Bay Academy) and Cristal Lake High School, to the agreement, bringing the total to 138. A special targeted notice program will take place in 2012 to reach former students of these two institutions. For all schools added to date, potential applicants have until September 19, 2012, to apply to the IAP.

Several other applications to add institutions to the Settlement Agreement are presently before the courts. These create a level of uncertainty for the IAP because it is difficult to predict how many former students of these schools might apply for the IAP if the applications are successful. It is also unclear how much time the courts will provide for students to make applications.

TOWARDS COMPLETION OF THE IAP

As this report outlines, the Independent Assessment Process has made great progress since implementation of the Settlement Agreement in 2007. There are few tribunals anywhere in the country that have held almost 12,000 face-to-face hearings in their entire existence, let alone in the barely over four years the IAP has been operating. However, the hearings held to date represent approximately half of the hearings that will likely be required to resolve all the claims. Planning the successful completion of the IAP was a significant focus of the Adjudication Secretariat's work over the past year.

The Adjudication Secretariat presented the outline for a strategy to complete the IAP at the May 2011 meeting of the Oversight Committee. Based on projections to that time, it would take until March 2015 to hold hearings for an estimated 27,000 admitted claims. These projections envisioned the current hearing process ramping up to 4,000 hearings per year beginning in April 2011. The paper also outlined administrative measures that the Adjudication Secretariat could take to manage the remaining caseload more proactively and ensure cases move forward without delay.

This approach presupposed that the supervising courts would grant an extension of the completion date contained in Article Six of the Settlement Agreement. This provision says that claims filed by the September 19, 2012 application deadline will be "processed" (meaning that the first hearing is held or a negotiated settlement achieved) within one year. It has become clear that, under the processes and procedures set out in the Settlement Agreement, this expectation is not realistic. Not only does the volume of claims far exceed the rate at which they can be heard, only a minority of claims receive a hearing within a year of being admitted.

> ... the parties agreed upon several important initiatives to support timely completion of the IAP

While the parties had come to accept that more time would be required, the clear message from the courts was that any extension to the completion date was to be avoided. Put simply, the Courts' view was that residential school survivors gave up the right to sue in exchange for an Independent Assessment Process that offered expeditious resolution of their claims within defined timelines. Any request for an extension of those timelines would be considered only after the parties had exhausted every possible avenue to conclude the process more quickly.

With this challenge in hand, the Adjudication Secretariat began a comprehensive and wide-ranging review of the IAP. Delays imposed by the Settlement Agreement on long-standing issues such as mandatory documents, hearing postponements, hearing attendance capacity, expert assessments, and decision delays were all examined anew. Alternative settlement approaches, including case management conferences, mediated settlements, and alternatives to the hearing process, were developed.

Thirty-one concrete proposals were presented to the Oversight Committee in August 2011, including changes that could be implemented by the Secretariat and those that would require agreement of the parties. Generally speaking, however, the parties were satisfied with the existing process and unwilling to give up the rights they negotiated into the Settlement Agreement. Rather than a wholesale reworking of the IAP, the parties agreed upon several important initiatives to support timely completion of the IAP:

- the Adjudication Secretariat will launch an electronic Interactive File Management System to support claimants' counsel in managing their caseloads, and to help provide the Secretariat with more timely information on the status of claims;
- the Chief Adjudicator implemented a new process to reduce the number of unnecessary postponements of hearings;
- Canada has agreed to provide resources to hold 4,500 first claimant hearings per year, commencing in April 2012; and
- the parties have agreed to undertake a pilot project in 2012 to find ways of expediting the process for claimants over age 65.

As well, the parties will continue to meet in 2012 to develop measures to be included in a joint application to the courts to extend the completion date. Even with a greater number of hearings each year, the last claimant hearing will likely take place in 2015, with decisions, reviews, and legal fee reviews to follow over the following two or three years.

A principal concern throughout this work is ensuring that concluding the IAP quickly and expeditiously does not come at a cost to claimants' safety and well-being in the process. Faster resolution of the claim is important to most claimants, but speed is only one part of the overall claimant experience. The IAP is not merely a cheque-cutting exercise, but a genuine effort on the part of Canada and the church organizations – and fully supported by adjudicators and Secretariat staff – to promote healing and reconciliation between residential school survivors and the organizations responsible for their experiences.

> A principal concern ... is ensuring that concluding the IAP quickly and expeditiously does not come at a cost to claimants' safety and well-being in the process

The year 2012 will mark a significant milestone in the journey of reconciliation, as the IAP application deadline passes and our focus turns to resolving the remaining claims. As significant and as challenging as the IAP is, we know that it represents a small step for survivors and their families in bringing healing and closure to the tragic legacy of Indian Residential Schools. The Indian Residential Schools Adjudication Secretariat will continue to support claimants and other hearing participants on this journey in order to help make the historic goals of the Settlement Agreement a reality.

Indian Residential Schools
Adjudication Secretariat
Secrétariat d'adjudication
des pensionnats indiens

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